

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
)

FIRST STATE, FSB
Lexington, Kentucky
OTS Docket No. 15249)

Order No.: ATL - 2004 - 01

Dated: January 14, 2004

**ORDER OF ASSESSMENT OF
CIVIL MONEY PENALTY**

WHEREAS, First State, FSB, Lexington, Kentucky, OTS Docket No. **15249** (First State or the Institution), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Order of Assessment of Civil Money Penalty (Stipulation); and

WHEREAS, First State, by executing the Stipulation, has consented and agreed to the issuance of this Order of Assessment of Civil Money Penalty (Order) by the Office of Thrift Supervision (OTS), pursuant to Section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(i), and Section 102(f) of the Flood Disaster Protection Act of 1973 (FDPA), 42 U.S.C. § 4012a(f)¹; and

WHEREAS, the Deputy Director of OTS, pursuant to delegated authority, has delegated to the Regional Directors of OTS the authority to issue Orders of Assessment of Civil Money Penalty on behalf of OTS where the institution that is the subject of the Order

¹ All references to the United States Code (U.S.C.) are as amended.

has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED that:

1. Within ten (10) calendar days of the date of this Order, First State shall pay the **sum** of \$3,850.00 by tendering a certified check or bank draft made payable to the order of the National Flood Insurance Program - Mitigation Fund, together with a copy of the executed Order and a cover letter referencing First State, FSB, Lexington, Kentucky, **OTS** Docket No. 15249, to the following address: 7700 Hubble Drive, Lanham, Maryland 20706. A copy of the check or bank draft and the cover letter shall be provided by U.S. Mail to Karen Bruton, Regional Counsel, Office of Thrift Supervision, 1475 Peachtree St, N.E., Atlanta, **GA 30309**.

MISCELLANEOUS PROVISIONS

2. Definitions.

All technical words or terms used in this Order and the Stipulation for which meanings **are** not specified or otherwise provided by the provisions of this Order shall, insofar **as** applicable, have meanings as defined in the FDIA. Any such technical words or terms used in this Order and the Stipulation and undefined in said FDIA shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

3. Successor Statutes, Regulations, Guidance, and Amendments.

Reference in this Order and the Stipulation to provisions of statutes, regulations, and OTS Publications shall be deemed to include references to all amendments to such provisions as have been made as of the effective date of this Order, and references to successor provisions as they become applicable.

4. Notices.

(a) Except as otherwise provided herein, any request, demand, authorization,

direction, notice, consent, waiver, or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with:

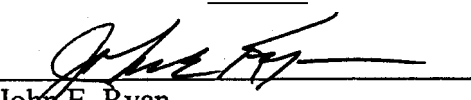
- (i) OTS, by First State, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, **1475** Peachtree St., N.E., Atlanta, **GA 30309** or telecopied to **404-897-1861** and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.
 - (ii) First State by OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case addressed to First State' Board at **386** Waller Avenue, Suite **10**, Lexington, KY **40504** or telecopied to **(859) 278-5959** and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.
- (b) Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service, or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Order, then, in the event such notice was sent by the United States mail, there shall be a presumption that the notice was received two business days after the date of the postmark on the envelope in which the notice was enclosed.

5. Duration, Termination or Suspension of Order.

This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by OTS, acting through its Director, Deputy Director, Regional Director, or other authorized representative.

THE OFFICE OF THRIFT SUPERVISION

By:



John E. Ryan
Southeast Regional Director

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

FIRST STATE, FSB
Lexington,, Kentucky
OTS Docket No. 15249

Order No.: ATL - 2004 - 01

Dated: January 14, 2004

**STIPULATION AND CONSENT TO THE ISSUANCE OF
AN ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY**

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, has informed First State, FSB, Lexington, Kentucky, OTS Docket No. 15249 (First State or Institution), that OTS is of the opinion that grounds exist to initiate administrative civil money penalty assessment proceedings against First State pursuant to Section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(i), and Section 102 of the Flood Disaster Protection Act of 1973 (FDPA), 42 U.S.C. § 4012a(f).¹

WHEREAS, First State desires to cooperate with the OTS to avoid the time and expense of such administrative enforcement proceedings and, without any adjudication on the merits, neither admits nor denies that grounds exist for any administrative enforcement proceedings, but only admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

¹ All references to the United States Code (U.S.C.) are as amended.

1. Jurisdiction.

(a) First State, at all times relevant hereto, was a “savings association” within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners’ Loan Act (HOLA), 12 U.S.C. § 1462(4). Accordingly, First State was an “insured depository institution” as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an enforcement proceeding against such an institution. Therefore, First State is subject to the authority of OTS to initiate and maintain civil money penalty assessment proceedings against it pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i). The Deputy Director of OTS, pursuant to delegated authority, has delegated to the Regional Director of the Southeast Region of OTS (Regional Director) the authority to issue Orders where the institution subject to the Order has consented to its issuance.

(c) First State is a “regulated lending institution” within the meaning of Section 3(a)(10) of the FDPA, 42 U.S.C. § 4003(a)(10).

(d) OTS is the “appropriate Federal entity for lending regulation” within the meaning of Section 3(a)(5) of the FDPA, 42 U.S.C. § 4003(a)(5). For purposes of enforcing Section 102 of the FDPA, 42 U.S.C. § 4012a, against such an institution, OTS has jurisdiction over First State and the subject matter of this administrative enforcement proceeding.

2. OTS Findings of Fact.

(a) First State has failed to comply with the FDPA, 42 U.S.C. §§ 4001-4128, and OTS implementing regulations, 12 C.F.R. Part 572. Specifically, the OTS finds that First State failed to purchase flood insurance on 2 loans as required by Section 102(e) of the FDPA, 42 U.S.C. § 4012a(e) and 12 C.F.R. § 572.3(a); failed to provide the flood notice on 6 loans as required by

Section 102(e)(1) of the FDPA, 42 U.S.C. § 4012a(e)(1) and 12 C.F.R. § 572.9; and failed to prepare and maintain Standard Flood Hazard Determination Forms for 3 loans as required by Section 102(e) of the FDPA, 42 U.S.C. § 4012a(e) and 12 C.F.R. § 572.6. OTS finds that such actions constituted a pattern or practice of violations under Section 102(f)(1) of the FDPA, 42 U.S.C. § 4012a(f)(1). Accordingly, OTS believes that a civil money penalty of \$3,850.00 should be assessed under the FDPA.

3. Consent.

First State consents to the issuance by OTS of the accompanying Order of Assessment of Civil Money Penalty (Order). First State further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality.

The Order is issued pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i), and Sections 102(f)(1) and 102(f)(5) of the FDPA, 42 U.S.C. §§ 4012a(f)(1) and 4012a(f)(5). Upon its issuance by the Regional Director or designee for the Southeast Region, OTS, it shall be a final Order, effective and fully enforceable by OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i), and Section 102(f) of the FDPA, 42 U.S.C. § 4012a(f).

5. Waivers.

First State waives the following:

(a) the right to be served with any written notice of OTS's assessment of civil money penalty against it (see Section 8(i) of the FDIA, 12 U.S.C. § 1818(i); Section 102(f)(4) of the FDPA, 42 U.S.C. § 4012a(f)(4); and 12 C.F.R. Part 509);

(b) the right to an administrative hearing of OTS's charges against it (see Sections 8(i) of the FDIA, 12 U.S.C. § 1818(i)).

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(i) of the FDIA, 12 U.S.C. § 1818(i), or otherwise to challenge the validity of the Order;

(d) the right to assert this proceeding, this consent to issuance of the Order, and/or the issuance of the Order, the payment of any monies, or the provision of any other financial relief as contemplated by the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; **and**

(e) any and all claims against OTS, including its employees and agents, **and** any other governmental entity for the award of fees, costs, or expenses related to this **OTS** enforcement matter and/or the Orders, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. §504, or 28 U.S.C. § 2412.

6. Scope of Release; Other Governmental Actions Not Affected.

(a) Upon OTS's issuance of the accompanying Order, following OTS's acceptance of this Stipulation executed by First State, OTS does release and discharge First State from all potential claims and charges that have been or might have been asserted by **OTS**, based on the alleged violations described in the Findings of Fact set forth in Paragraph 2 of this Stipulation, to the extent known to OTS as of the effective date of the accompanying Order. This release shall not preclude or affect any right of OTS to determine and ensure compliance ~~with~~ the terms and provisions of this Stipulation and the accompanying Order.

(b) First State acknowledges and agrees that its consent to the issuance of the accompanying Order is solely for the purpose of resolving certain potential OTS administrative enforcement charges as provided by Paragraph 6(a) above, and does not otherwise release,

discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, liability, or other administrative, civil, or criminal proceeding that arise pursuant to this action or otherwise, and that may be or have been brought by another governmental entity.

7. Agreement for Continuing Cooperation.

First State agrees that, on reasonable notice and without service of a subpoena, it will promptly respond to any written request from OTS for documents that OTS reasonably requests to demonstrate compliance with the Order. First State agrees to cooperate with OTS or any other federal agency in any review requested by OTS or any other federal government agency, or in any investigation, litigation, or other proceeding relating to First State, its holding company, subsidiaries, service corporations, or institution-affiliated parties.

8. Miscellaneous.

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;

(b) In case any provision of this Stipulation and the Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise;

(c) All references to OTS in this Stipulation and the Order shall also mean any of OTS's predecessors, successors, and assigns;

(d) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;

(e) The terms of this Stipulation and the Order represent the final agreement of the parties

with respect to the subject matters hereof and constitute the sole agreement of the parties with respect to such subject matters; and

(f) This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by OTS, acting through its Director, Deputy Director, Regional Director, or other authorized representative.

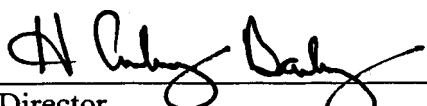
9. Signature of Directors.

Each Director signing this Stipulation attests that s/he voted in favor of a **Board** resolution authorizing execution of the Stipulation.

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WHEREFORE, First State, by a majority of its directors, executes this Stipulation and Consent to the Issuance of an Order of Assessment of Civil Money Penalty, intending to be legally bound hereby.

FIRST STATE, FSB
by a majority of its directors

By: 
Director

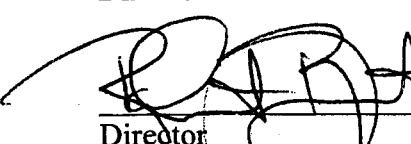
12/17/03
Date


Director

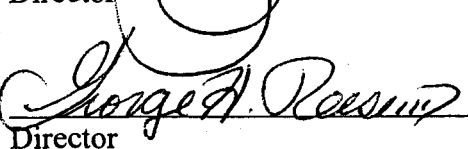
12/17/03
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Director

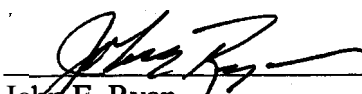
Dec 17, 2003
Date


Director

12/17/03
Date

ACCEPTED on the date of the Order by:

OFFICE OF THRIFT SUPERVISION

By: 
John E. Ryan
Regional Director
Southeast Region

Date: 1/14/04